IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.1608 of 2007
With
Criminal Writ Petition No.1609 of 2007

Mr.Imtiyaz A. Shaikh Applicant
Vs.
Mr.Anil Kakade & anr. Respondents

Mr.Ramesh Dube-Patil i/b. M/s. Jay & Co. for petitioner.

Mr.Jayant Bodke and Mr.V.P.Shastri for resp.no.1.

Mr.D.R.More, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 21, 2007.

P.C.

. Heard.

. Rule. Respondents waive service. The learned APP appears for the State. By consent, petitions are taken up for final hearing forthwith.

. Both the petitions raise a common grievance i.e. rejection of application to place on record the original documents in C.C.No.1083/SS/2006 and C.C. No.9238/SS/2005 by the trial Court. The complaints have been filed for dishonour of cheques in the amount of Rs.20,000/- and Rs.80,000/- respectively.

. On or about 22/2/2007 an application was submitted in both the complaints by the complainant praying for leave to bring on record the original documents like the dishonoured cheques, legal notice issued and other relevant record. This was opposed by the accused. The learned Magistrate noted that the evidence of the complainant was recorded on 16/10/2006 and on the same day a list of documents was filed but without any documents along with the same on behalf of the complainant. A direction was given to the complainant to bring on record the original documents and they were apprised of the same on 16/10/2006 by the learned Magistrate. The complainant was cross-examined on 17/1/2007 and the evidence closed pursis was filed by the complainant on the next date. One month later the subject applications came to be filed and on the day when the statement of the accused under Section 313 of Cr.P.C. was recorded. By the impugned orders dated 3/5/2007 the applications came to be rejected.

. As directed by this Court, the learned counsel for the petitioner has produced these original documents. It has been further submitted that the

Advocate who was dealing with the complaints, inspite of instructions, did not take steps to bring these documents on record and due to the negligence of the Advocate, the party should not be allowed to suffer. Admittedly the documents sought to be produced were in the custody of the complainant or his Advocate all along. However, in the complaint filed under Section 138 of the Negotiable Instruments Act, 1881, the attitude of the Courts need not be hyper technical and so long as the documents sought to be produced are original documents and relevant in the case, some leverage will have to be granted, may be by levying exemplary costs and in any case it is a case of summary trial. At the same time the accused also will have to be provided with an opportunity to cross-examine the complainant further on submission of these original documents.

. Hence the petitions are allowed and the impugned orders dated 3/5/2007 passed by the learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai are hereby quashed and set aside. The documents sought to be produced vide the applications be taken on record subject to the condition that the petitioner shall, in each of the complaints, deposit

an amount of Rs.1,000/- by way of costs. This cost will be appropriated towards the Legal Services Authority Fund of the concerned Court. Cost amount be deposited within two weeks with the Mumbai District Legal Services Authority.

. Rule made absolute accordingly.

(B.H.MARL